

5-17-02

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EXPRESS MAIL CERTIFICATE

Date 5/15/02 Label No. 01028648268-05

I hereby certify that, on the date indicated above, this paper or fee was deposited with the U.S. Postal Service & that it was addressed for delivery to the Assistant Commissioner for Patents, Washington, DC 20231 by "Express Mail Post Office to Addressee" service.

Name (Print) SID BEEK

Signature [Signature]

#5 / Protest
7 IDS
01/20/02

RECEIVED
MAY 21 2002
TECHNOLOGY CENTER R3700
Docket No.: 4152/86888

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: John G. CIESAR; James W. KENDALL; Scott A. MASSING

Serial No.: 09/882,627 Art Unit: 3700

Filed: June 15, 2001 Examiner:

For: BATTING SWING TRAINER AND METHOD

PROTEST UNDER 37 C.F.R. § 1.291(a)

Assistant Commissioner for Patents
Washington, DC 20231

ATTENTION: Director of the 3700 Technology Center

Sir:

Pursuant to 37 C.F.R. § 1.291(a):

Upon information and belief, this Protest is being submitted prior to the mailing of the Notice of Allowance for the above referenced application.

This Protest has been served upon the Applicant in accordance with 37 C.F.R. § 1.248(a)(4). The Protest was served by First Class mail and a Certificate of Mailing is enclosed.

A PTO Form 1449 is enclosed listing the reference relied upon.

A concise explanation of the relevance of the enclosed reference is discussed below:

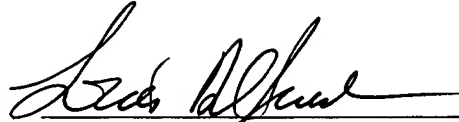
PCT/US98/25231

The Applicants of the Protested application make reference to the Kallassy™ Swing Magic® in paragraph 0009 and claim their invention is distinguishable. The above referenced PCT application was the pending international application for the Kallassy™ Swing Magic® product. This application was published June 3, 1999, more than one year prior to the applicant's priority date. Its particular relevance is on page 14, lines 16-19 wherein the specification states "[t]he present invention contemplates that similar concepts can have application for training in other sports. For example, a slidable grip can be used effectively with a baseball swing training device generally similar to a conventional baseball bat." Thus, the PCT application clearly teaches the use of the Kallassy™ Swing Magic® device as a baseball bat swing trainer. Therefore, it is a highly relevant reference with regards to the above identified application.

A copy of the reference is enclosed.

The reference is in English.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Louis J. DeJuidice", written over a horizontal line.

Louis J. DeJuidice
Reg. No. 47,522

Dated: May 15, 2002

DARBY & DARBY P.C.
Post Office Box 5257
New York, NY 10150-5257
212-527-7700

Docket No. 4152/86858

**LIST OF REFERENCES CITED BY APPLICANT**

(Use Several Sheets if Necessary)

DOCKET NO.: 4152/86858 SERIAL NO: 09/882,627
APPLICANT: John G. CIESAR FILING DATE: June 15, 2001

U.S. PATENT DOCUMENTS

<u>*EXAMINER</u> <u>INITIALS</u>	<u>DOCUMENT</u> <u>NUMBER</u>	<u>DATE</u>	<u>NAME</u>	<u>CLASS</u>	<u>SUBCLASS</u>	<u>FILING DATE</u>
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FOREIGN PATENT DOCUMENTS

<u>*EXAMINER</u> <u>INITIALS</u>	<u>DOCUMENT</u> <u>NUMBER</u>	<u>DATE</u>	<u>COUNTRY</u>	<u>CLASS</u>	<u>SUBCLASS</u>	<u>TRANSLATION</u> <u>YES</u> <u>NO</u>
<u>MA</u>	1. US98/25231	06/03/99	PCT	A36B	69/36	

OTHER REFERENCES**(INCLUDING AUTHOR, TITLE DATE, PERTINENT PAGES, ETC.)**

*EXAMINER
INITIALS

EXAMINER: Mitra AryampourDATE CONSIDERED: 9-24-02

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

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In re Application of: John G. CIESAR; James W. KENDALL; Scott A.

MASSING

Serial No.: 09/882,627

Art Unit: 3700

Filed: June 15, 2001

Examiner:

For: BATTING SWING TRAINER AND METHOD

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TECHNOLOGY CENTER

CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 2002, a copy of the foregoing PROTEST
UNDER 37 CFR § 1.291(a) (with copies of the references) was sent by First Class
mail to:

Laff, Whitesel & Saret, Ltd
Suite 1700
401 N. Michigan Avenue
Chicago, IL 60611

attorneys of record for Applicants John G. Ciesar, James W. Kendall, and Scott A.
Massing in U.S. Patent Application No. 09/882,627.



Signature